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APR 14
CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 528.

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY, and F. D. CAMPBELL, - - - - - Petitioners,

vs.

STATE OF SOUTH CAROLINA EX REL. JOHN M. DANIEL, Attorney General.

On Writ of Certiorari to the Supreme Court of the State of South Carolina.

MEMORANDUM IN OPPOSITION TO MOTION TO ADVANCE CASE FOR HEARING.

WILLIAM MARSHALL BULLITT,
C. EDWARD PAXSON,
GEORGE M. LePINE,
W. C. McLAIN,
Attorneys for Petitioners.

April 9, 1930.

WESTERFIELD-BOOTH COMPANY, INCORPORATED, LOUISVILLE, KY.

Supreme Court of the United States

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STATE OF SOUTH CAROLINA EX REL. JOHN M. DANIEL, ATTORNEY GENERAL.

On Writ of Certiorari to the Supreme Court of the State of South Carolina.

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I.

The State would have it appear that the delays in this case have been due to action of the United States District Court in a bankruptcy proceeding affecting the street railway company. The record in this case shows:

(1) That the stay of the Federal Court was operative only for a period of *two months and nine days.*

(2) That the Supreme Court of South Carolina took *three months* for a consideration of the demurrers filed

in the case; *nine months* for a consideration of the case after final hearing; and *two months* to deny the petition for rehearing. In other words, the Supreme Court of South Carolina, sitting in the city wherein this case arose, deliberated *more than a year* on the disposition to be made of the case.

The reason why this court should advance the hearing of this case on the ground of some supposed emergency is therefore not apparent. The City of Columbia now has a bus system in operation so that it is not without transportation facilities.

II.

The decision of the court below, a decision by it in its original jurisdiction, raises many questions of constitutional law which are of the utmost importance to a great industry.

New counsel now appear for the petitioners in this court; and he must acquaint himself with a record consisting of two large volumes containing nearly *twelve hundred* printed pages; and the time which has elapsed since the filing of the petition of *certiorari* has not been sufficient for that purpose.

It is believed that no facts exist in the case at bar which make it more important than other cases heard by this court nor does any emergency exist which requires that it receive any other or different treatment than any other important case on the calendar of this court.

For these reasons the petitioners in this court submit that this case should be heard in its regular order, which will be in October next, and that no facts exist which require that it should receive preferential treatment.

III.

The statements of fact, and the reasons given by the State of South Carolina for advancing this case, consist in the main of a statement of the contentions of the State as to the ultimate facts in the case which are in dispute before this court.

Whether the railway company was given a franchise to operate street cars, furnish electricity for light and power, and furnish fuel for lighting gas in the City of Columbia and vicinity, involves a construction of the charter of the railway company, and what the proper construction of this charter is constitutes one of the principal questions for the determination of this court. The question as to the consideration paid by Broad River Power Company for the electric and gas properties of the railway company involves a determination as to the effect of undisputed evidence, and it is the contention of the petitioners in this court that there was ample consideration for the conveyance and that the railway company was not left insolvent by the transfer of its electric and gas properties.

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